

**COMMONWEALTH OF MASSACHUSETTS**

**BARNSTABLE, SS**

**SUPERIOR COURT DEPT.**

**CIVIL ACTION NO. 1972CV103**

**TOWN OF BOURNE AND  
TOWN OF BOURNE FIRE  
CHIEF,**

**Plaintiffs**

**vs.**

**IAFF, LOCAL 1717,**

**Defendant.**

**COMPLAINT**

- 1) The Plaintiff, the Town of Bourne, is a municipal corporation organized under the laws of the Commonwealth of Massachusetts;
- 2) The Plaintiff, the Bourne Fire Chief, is a duly appointed municipal official authorized to manage and supervise all of the affairs of the Bourne Fire Department. On March 8, 2018, the Governor of the Commonwealth of Massachusetts signed Special Legislation passed by the Massachusetts House and Senate bestowing extraordinary powers on the Bourne Fire Chief to manage and supervise the Bourne Fire Department (See Exhibit A);

- 3) The Defendant, Local 1717, is a duly organized Union representing Bourne Firefighters, except for the Chief and the Assistant Chief of the Bourne Fire Department;
- 4) On February 28, 2015, the Bourne Town Administrator appointed Norman Sylvester as the Chief of the Bourne Fire Department (See Exhibit B);
- 5) On April 15, 2016, the Town of Bourne called a Special and Annual Town Meeting to consider proposed changes and modification to the Town of Bourne Home Rule Charter (See Exhibit C);
- 6) The Town of Bourne Home Rule Charter was passed by the Legislature and signed into law by the Governor on March 8, 2018 (See Exhibit A);
- 7) On May 2, 2016, the Bourne Town Meeting passed Article 29 authorizing the Board of Selectmen to petition the General Court for certain changes to the Town of Bourne Home Rule Charter recommended by a Charter Review Committee (See Exhibit D);
- 8) The Board of Selectmen of the Town of Bourne subsequently submitted a Petition to the General Court to authorize the Charter Changes voted by the Town Meeting;



- 9) The Charter Changes included amendment of the Charter adopted by the Town of Bourne by expanding the authority of the Bourne Fire Chief over the Bourne Fire Department;
- 10) Prior to the passage of the law, certain administrative functions of the Department had been subject to the doctrine of "past practice" that creates constraints on the authority of the Fire Chief to alter existing policies and practices of the Fire Department;
- 11) The current Collective Bargaining Agreement between the Town of Bourne and Local 1717 was executed on October 30, 2017 and effective from July 1, 2017 expiring June 30, 2020; (See Exhibit E);
- 12) Included in the Collective Bargaining Agreement were provisions defining "Management Rights" and "Past Practice;"
- 13) The Collective Bargaining Agreement also includes a provision regarding a prerequisite for a recruit to continue as a member of the Fire Department: certification as a Firefighter I/II;
- 14) The Collective Bargaining Agreement requires that training for certification as Firefighter I/II be completed at the Massachusetts Fire Academy Recruit Firefighting Program or its "designated substitute;"



15) The Fire Chief appointed two individuals as Firefighters on July 7, 2016 and July 25, 2016, respectively;

16) Each of the two individuals were certified as Firefighter I/II;

17) On June 14, 2018, Local 1717 filed a Grievance asserting that the Fire Chief could not select a "designated substitute" to the Massachusetts Fire Academy (See Exhibit F);

18) On June 19, 2018, the Bourne Fire Chief denied the Grievance; (See Exhibit G);

19) On August 3, 2018, Local 1717 appealed the denial of the Grievance to the Bourne Town Administrator;

20) On August 7, 2018, the Bourne Town Administrator upheld the Fire Chief's Denial of the Grievance; (See Exhibit H);

21) Local 1717 filed a Demand for Arbitration on August 22, 2018; (See Exhibit I);

22) On September 10, 2018, an Arbitrator was appointed and a Hearing was held on December 11, 2018; (See Exhibit J);

23) On February 6, 2019, the Arbitrator rendered a Decision declaring that past practice required that the Fire Chief could not designate a substitute to the Massachusetts Fire Academy; (See Exhibit K). The



Arbitrator rejected the Town's contention that state law had been amended to bestow broad authority on the Bourne Fire Chief permitting the Chief to select a designated substitute for Firefighter training;

24) The Arbitrator's Decision declared that the Collective Bargaining Agreements reference to the authority of the Fire Chief did not refer to the Fire Chief, as referenced in the Special Act relating to the Town of Bourne, or the current Fire Chief, but to a composite Fire Chief composed of the identities of the current and former Fire Chiefs of the Town;

25) The Arbitrator's Decision declared that the current Bourne Fire Chief did not have the authority to manage the Bourne Fire Department pursuant to the Special Act relating to the Town of Bourne but that this authority was subservient to "past practice" by former Fire Chiefs of the Town of Bourne;

26) The Decision of the Arbitrator is contrary to the Law of the Commonwealth authorizing the current Bourne Chief to have "full and absolute authority in the administration of the Fire Department" over the affairs of the Bourne Fire Department;



27) The Decision of the Arbitrator exceeded the authority of the Arbitrator because it is contrary to the law of the Commonwealth pursuant to the Special Act relating to the Town of Bourne;

28) The Decision of the Arbitrator is contrary to law inasmuch as it requires the Bourne Fire Chief to act inconsistently with the law of the Commonwealth;

29) The Decision of the Arbitrator is void as it violates public policy;

30) The Decision of the Arbitrator is void as it violates the requirements of public safety;

31) The Decision of the Arbitrator is void because it strips the Fire Chief of the authority vested in him by the Legislature and the Governor of the Commonwealth;

Wherefore, the Town of Bourne and the Bourne Fire Chief respectfully request this Honorable Court to

- 1) Vacate the Award of the Arbitrator;
- 2) Issue a Binding Declaratory Judgment affirming that the provisions of the Special Act relating to the Town of Bourne is in full force and effect;

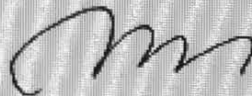


- 3) Issue a Binding Declaratory Judgment declaring that the Bourne Fire Chief has the powers granted to him by the Special Act relating to the Town of Bourne;
- 4) Issue a Binding Declaratory Judgment declaring that the Bourne Fire Chief may select a "designated substitute" to the Massachusetts Fire Training Academy to train recruits;
- 5) Issue a Binding Declaratory Judgment that the Award of the Arbitrator is contrary to the provisions of the Special Act relating to the Town of Bourne and is therefore void and of no effect;
- 6) Issue a Binding Declaratory Judgment declaring that the Award of the Arbitrator violates the Town of Bourne Home Rule Charter, as amended;



7) For whatever other relief This Honorable Court deems just and appropriate.

Respectfully submitted,  
For the Town of Bourne and Bourne  
Fire Chief,  
By their Attorney,



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Robert S. Troy  
Bourne Town Counsel  
BBO# 503160  
Troy Wall Associates  
90 Route 6A  
Sandwich, MA 02563  
(508) 888-5700  
[rst@troywallassociates.com](mailto:rst@troywallassociates.com)

DATED: March 6, 2019



# EXHIBIT A



Chapter 37  
of the Acts of 2018

THE COMMONWEALTH OF MASSACHUSETTS

In the One Hundred and Ninetieth General Court

AN ACT AMENDING THE CHARTER OF THE TOWN OF ROUSE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Subsection (b) of section 2-5 of article 2 of section 1 of chapter 117 of the acts of 2012 is hereby amended by striking out, in line 1, the figure "75" and inserting in place thereof the following figure:- 50.

SECTION 2. Said subsection (b) of said section 2-5 of said article 2 of said section 1 of said chapter 117 is hereby further amended by striking out, in line 2, the figure "45" and inserting in place thereof the following figure:- 25.

SECTION 3. Said subsection (b) of said section 2-5 of said article 2 of said section 1 of said chapter 117 is hereby further amended by striking out, in line 2, the word "four-fifths" and inserting in place thereof the following words:- a majority.

SECTION 4. Subsection (c) of said section 2-5 of said article 2 of said section 1 of said chapter 117 is hereby amended by inserting after the word "projections", in line 5, the following words:- , their budget goals.

SECTION 5. Said subsection (c) of said section 2-5 of said article 2 of said section 1 of said chapter 117 is hereby further amended by inserting after the word "year", in line 6, the first time it appears, the following words:- , an organization table.

SECTION 6. The first paragraph of section 3-3 of article 3 of said section 1 of said chapter 117 is hereby amended by striking out the second, third and fourth sentences and inserting in place thereof the following sentence:- Annual goals as voted by the board of selectmen shall be filed with the town administrator not later than July 1 after the regular spring town election and shall also be published in the annual town report.

SECTION 7. The second paragraph of said section 3-3 of said article 3 of said section 1 of said chapter 117 is hereby amended by striking out the first sentence and inserting in place thereof the following 3 sentences:- An individual selectman shall have no independent authority unless specifically authorized by a vote of the board of selectmen. Selectmen shall deal with administrative agencies and departments only through the town administrator. Selectmen, individually or as a board, shall not become involved in the day-to-day administration of a town department.



SECTION 8. Section 3-5 of said article 3 of said section 1 of said chapter 117 is hereby amended by inserting after the first sentence the following sentence:- Representatives of boards or committees specified as members of a committee shall be designated by their respective boards or committees.

SECTION 9. Said article 3 of said section 1 of said chapter 117 is hereby further amended by striking out section 3-6 and inserting in place thereof the following section:-

section 3-6: Prohibitions.

(a) No member of the board of selectmen shall serve on an elected or appointed town board or committee established by this charter, by by-law or by town meeting, unless otherwise specified in the charter, by-law, by town meeting or by any other applicable law.

(b) No member of the board of selectmen shall hold any other elected town office or town employment during that member's term in office.

(c) No person who has served as a member of the board of selectmen shall be employed by the town for 1 year after that member's resignation or after the member's term of office has expired.

SECTION 10. The first paragraph of section 4-1 of article 4 of said section 1 of said chapter 117 is hereby amended by striking out, in line 4, the figure "30" and inserting in place thereof the following figure:- 60.

SECTION 11. The second paragraph of said section 4-1 of said article 4 of said section 1 of said chapter 117 is hereby amended by striking out, in line 2, the words "on indefinite term" and inserting in place thereof the following words:- a term defined by contract.

SECTION 12. The third paragraph of said section 4-1 of said article 4 of said section 1 of said chapter 117 is hereby amended by striking out the third sentence.

SECTION 13. Said section 4-1 of said article 4 of said section 1 of said chapter 117 is hereby further amended by inserting after the third paragraph the following paragraph:-

The town administrator need not be a resident of the town when appointed but shall establish primary residence in the town of Housatonic within 1 year after the date of appointment; provided, however, that the board of selectmen may, by a simple majority vote of the selectmen in office at the time of the appointment, extend the time for establishing residence or otherwise allow the town administrator to reside elsewhere. Once a residency exemption is granted to a specific town administrator, it shall not be rescinded in future contracts with that town administrator.

SECTION 14. Section 4-4 of said article 4 of said section 1 of said chapter 117 is hereby amended by striking out, in lines 1 and 7, the word "may" and inserting in place thereof, in each instance, the following word:- shall.



SECTION 15. Said section 4-4 of said article 4 of said section 1 of said chapter 117 is hereby further amended by striking out, in line 4, the words "exceeds 30 days" and inserting in place thereof the following words:- is greater than 10 business days.

SECTION 16. Clause (c) of section 4-6 of said article 4 of said section 1 of said chapter 117 is hereby amended by adding the following words:- and in accordance with the policies and goals established by the board of selectmen.

SECTION 17. Said section 4-6 of said article 4 of said section 1 of said chapter 117 is hereby further amended by striking out clause (f) and inserting in place thereof the following clause:-

(f) keep the board of selectmen fully informed of all issues and problems it needs to address.

SECTION 18. Clause (n) of said section 4-6 of said article 4 of said section 1 of said chapter 117 is hereby amended by adding the following words:- and inform the board of selectmen of all changes in compensation made within 30 days.

SECTION 19. Section 5-1 of article 5 of said section 1 of said chapter 117 is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The town administrator shall annually submit a table of organization establishing personnel requirements within all town departments to the board of selectmen by June 1.

SECTION 20. Said article 5 of said section 1 of said chapter 117 is hereby further amended by adding the following T 20061023:-

Section 5-7: Police Department.

There shall be a police department which shall be under the control and supervision of a chief of police. The chief of police shall be appointed pursuant to clause (b) of section 4-6. The town administrator shall be the appointing authority for all police officers under the control of the chief of police. The chief of police may from time to time make suitable regulations governing the police department, and the officers thereof, subject to approval of the town administrator; provided, however, that the regulations shall become effective without that approval if the town administrator fails to take action thereon within 10 days after the regulations have been submitted to the town administrator by the chief of police. The chief of police shall be in immediate control of all town property used by the police department and shall be in charge of the police officers. The chief of police shall assign to the police officers their respective duties and the police officers shall obey all orders of the chief of police.

Section 5-8: Fire Department.

There shall be a fire department which shall be under the control and supervision of a chief of the fire department. The chief of the fire department shall be appointed pursuant to clause (b) of section 4-6. The chief of the fire department shall have charge of extinguishing fires in the town



and the protection of life and property in case of fire. The chief of the fire department shall purchase and keep in repair all property and apparatus used for and by the fire department, with the approval of the town administrator. The chief of the fire department shall have and exercise all of the powers and discharge all of the duties conferred or imposed by law upon fire chiefs in towns except as herein provided. The chief of the fire department shall appoint such deputy chiefs and such officers and firefighters as the chief deems necessary and may remove the same at any time for cause and after a hearing. The chief of the fire department shall have full and absolute authority in the administration of the fire department, shall make all rules and regulations for its operation, shall report to the town administrator from time to time as the administrator may require and shall annually report to the town the condition of the department, including any recommendations thereon. In the expenditure of money, the chief of the fire department shall be subject to such further limitations as the town may from time to time prescribe.

SECTION 21. The first paragraph of section 5-8 of article 4 of said section 1 of said chapter 117 is hereby amended by striking out, in line 4, the word "3-year" and inserting in place thereof the following words: 5-year.

SECTION 22. The first sentence of section 7-3 of article 7 of said section 1 of said chapter 117 is hereby amended by adding the following words: which shall be submitted to the board of selectmen as part of the annual budget message.

SECTION 23. Subsection (a) of section 5-8 of article 4 of said section 1 of said chapter 117 is hereby amended by striking out, in line 3, the words "and posted on the town website for at least 5 years".

SECTION 24. Section 5-9 of said article 4 of said section 1 of said chapter 117 is hereby amended by inserting after the definition of "Charter" the following definition:-

"Goal", the desired outcome of a policy, program or other action.

SECTION 25. Said section 5-9 of said article 4 of said section 1 of said chapter 117 is hereby further amended by inserting after the definition of "Multiple member body" the following definition:-

"Policy", a statement of a proffered practice.

SECTION 26. This act shall take effect upon its passage.

House of Representatives, February 26, 2018.

Passed to be enacted,

*Paul J. Horvath*

Speaker.

In Senate, March 1, 2018.

Passed to be enacted,

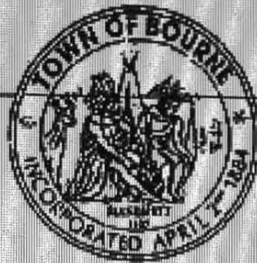
*Barbara L. Chandler*

President.



# **EXHIBIT B**





# Town of Bourne

## OFFICE OF TOWN ADMINISTRATOR

Bourne, MA February 28, 2015

**Norman W. Sylvester, Jr., 130 Main Street, Buzzards Bay 02532**

The undersigned Town Administrator of Bourne has this day appointed you

**Fire Chief**

This appointment is valid until: **Suspended or Revoked**

Sworn to before me

This ..... day of  
..... 20 .....

Thomas M. Guerino  
Town Administrator

.....  
Town Clerk



# EXHIBIT C





# Board of Selectmen Meeting Notice

## AGENDA



Date

Tuesday  
April 15, 2016

Time

2:00 p.m.

Location

Bourne Town Hall  
Selectmen/Town Administrator's Office  
24 Perry Avenue  
Bourne, MA 02532

Items within the meeting agenda are subject to deliberation and vote(s) by the Board of Selectmen.

Call Meeting to Order

Sign Special and Annual Town Meeting Warrants

Adjourn

RECEIVED

2016 APR 13 PM 1:03

TOWN CLERK BOURNE



# EXHIBIT D



BARR H. JOHNSON  
Town Clerk



WENDY CHAPMAN  
Assistant Town Clerk

## TOWN OF BOURNE

Office of the Town Clerk

*At a legal meeting of the Town of Bourne held May 2, 2016, a quorum being present, the following business was transacted under Article 29:*

**ARTICLE 29:** To see if the Town will vote to authorize the Board of Selectmen to petition the General Court, under the Home Rule Amendment to the Massachusetts Constitution, for certain Amendments to the Town of Bourne Charter, as described in the Revised Draft Report of the Town of Bourne 2015 Charter Review Committee, dated April 14, 2016, a copy of which is on file at the Office of the Town Clerk, or take any action in relation thereto.

*Sponsor - Bourne Charter Committee*

**MOTION:** *we move that the Town vote to authorize the Board of Selectmen, under the Home Rule amendment to the Massachusetts Constitution, to Petition the General court to adopt certain Amendments to the Town of Bourne as described in the revised Draft report of the Town of Bourne 2015 Charter Review Committee, on file at the Office of the Town Clerk and included on pages 69 - 81 of the Voter Handbook.*

*Wesley Ewell, Chairman of the Charter Review Committee, offered the following Amendments to the Main Motion:*

**Amendment #1:** *I move to amend the Main Motion on Article 29 by deleting the added wording in Section 2.9 related to the Finance Committee as shown in the second paragraph on page 73 of the Voter Handbook. The wording of Section 2.9 of the Charter shall remain as shown in paragraph one on page 73 of the Voter Handbook.*

**VOTE:** *the Ayes have it; declare this motion passes; UNANIMOUS VOTE.*

**Amendment #2:** *I move to amend the main Motion on Article 29 by adding "is" after the word disability in Section 4.4 on page 77 of the Voter Handbook. The amended wording to read: If the absence or disability is greater than ten days, any designation made by the town administrator shall be subject to approval of the board of selectmen.*

24 Perry Avenue  
Buzzards Bay, Massachusetts 02532  
Phone 508-759-0600 x505



*VOTE: the AYES have it; declared the motion passes; UNANIMOUS VOTE.*


*Amendment #3: I move to amend the main motion on Article 29 by amending the proposed wording in section 4-6 (f) on page 78 of the warrant to read: (f) keep the board of selectmen fully informed of all issues and problems that they need to address.*

*VOTE: the AYES have it; declared the motion passes; UNANIMOUS VOTE.*

*VOTE ON THE MAIN MOTION AS AMENDED: the Ayes have it; declared the motion passes; UNANIMOUS VOTE.*

*A true copy,*

*Attest:*



*Wendy J. Chapman*  
*Assk. Town Clerk*

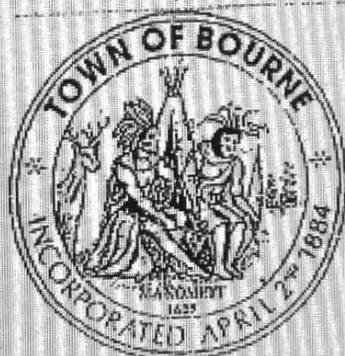


**ARTICLES OF THE WARRANT  
FOR THE  
BOURNE SPECIAL  
AND  
ANNUAL TOWN MEETING**

**Monday, May 2, 2016**

**7:00 P.M.**

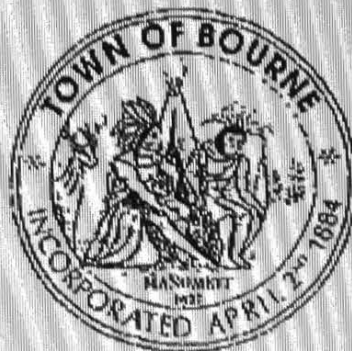
**BOURNE HIGH SCHOOL AUDITORIUM**



**A Voter's Handbook**

***PLEASE BRING THIS HANDBOOK TO EACH SESSION OF  
TOWN MEETING***





**TOWN OF BOURNE  
2015 CHARTER REVIEW  
COMMITTEE**

**REPORT  
TO  
TOWN MEETING**

**April 14, 2016**

Wesley Ewell, Chairman  
Joseph Carrara, Vice-Chairman  
Richard Anderson, Clerk  
Daniel Doucette  
James Mulvey  
David Pelonzi  
Dennis White



**TOWN OF BOURNE  
2015 CHARTER REVIEW COMMITTEE REPORT  
TO TOWN MEETING**

**Introduction**

The Town of Bourne elected a Charter Commission in 2000 to create the town's first home rule charter. The first charter was adopted by the town's registered voters on April 4, 2001. This charter changed Bourne's basic form of government from administration by a full-time three-person Board of Selectmen to administration by a professional Town Administrator, working under policies established by a part-time five-person Board of Selectmen.

One provision of the charter calls for review every five years by an appointed Charter Review Committee. The purpose—and sole power—of a Charter Review Committee is to report to the Town Meeting on how the charter is working and to recommend changes to make it work better. Unlike an elected Charter Commission, an appointed Charter Review Committee cannot make changes in the form or organization of government, such as going from an open town meeting to an elected representative town meeting. Its focus is limited to correcting minor problems, inconsistencies, errors, and procedures that have not worked well.

The 2005 Charter Review Committee dealt primarily with issues related to the transition from a full-time administrative Board of Selectmen to a part-time policy-setting Board of Selectmen working with a full-time professional Town Administrator. As such, its recommendations aimed at achieving two objectives: to clarify and strengthen the role of the Board of Selectmen as the chief policy-making body for the town; and to clarify the responsibility of the Town Administrator for the daily operation of the town.

The 2010 Charter Review Committee identified more than fifty issues for discussion. Most of these issues were internal conflicts and minor errors in spelling or grammar. Some were found to be outside of the scope of the charter or better dealt with by the Board of Selectmen or the Town Administrator. The 2010 committee drafted two articles for Town Meeting. The first was a housekeeping article to fix minor errors; the second recommended ten changes in the charter to fix problems that arose during the previous five years.

The 2015 Charter Review Committee was appointed by the Board of Selectmen on July 21, 2015 and convened its first meeting on August 12. Like the earlier committees, this group interviewed every public official and citizen who expressed a desire to meet with it. Unlike earlier committees, it did not conduct a public survey. The 2000 Charter Commission received more than 1100 responses to its survey. The 2005 Charter Review Committee received 35 responses to its survey. The 2010 committee received only eleven, and it appeared that several of them may have been written by the same person. Clearly, the charter was working well and widespread interest in it had waned to the point where it was not worth the time and effort to conduct another survey.

The 2015 committee considered 58 changes to the charter suggested by the people who were interviewed or who submitted written statements, or initiated by committee members. Most of the changes discussed were not brought to vote when it was clear that there was a unanimous or nearly unanimous consensus that the suggested change was not favored by the committee. All votes taken by the committee were decided unanimously except when there were abstentions.

The Charter Review Committee wants to especially thank Dick Anderson for taking minutes while also participating in discussions. The town was unable to supply promised clerical



# TOWN OF BOURNE 2015 CHARTER REVIEW COMMITTEE REPORT TO TOWN MEETING

assistance to the committee because of severe staff shortages resulting from its fiscal crisis. Dick did an admirable job of summarizing often extensive discussions on many issues.

## Formal Interviews

The following public officials appeared before the committee to share their experience, expertise and concerns. The committee wishes to thank each of them for their time and their help in shaping its recommendations.

Thomas Guerino, Town Administrator  
Robert Troy, Town Counsel  
Donald Pickard, Selectman  
Peter Meier, Selectman  
Donald Ellis, Selectman  
Stephen Mealy, Selectman  
Barry Johnson, Town Clerk and Former Selectman  
Dennis Woodside, Chief of Police  
Norman Sylvester, Fire Chief  
Mary Jane Mastrangelo, Finance Committee Chair

## Other Participants

Judy Conron, Finance Committee Member and former Selectman  
Richard Conron suggested changes and participated in several meetings  
Michael Rausch, Reporter for The Bourne Enterprise covered many of the meetings

## Public Hearing

A public hearing was held at the Bourne Veterans Memorial Community Center on April 13, 2016. Town Administrator Thomas Guerino, Selectman Donald Ellis, and one other person attended.

## Meeting with Finance Committee

*(Scheduled for April 20)*

# RECOMMENDATIONS FOR CHANGES TO THE TOWN OF BOURNE HOME RULE CHARTER



**TOWN OF BOURNE  
2015 CHARTER REVIEW COMMITTEE REPORT  
TO TOWN MEETING**

Existing wording is shown first, followed by recommended action in *italics*, then revised wording, and reason for the changes. Proposed changes are shown in **bold letters** or ~~overstrikes~~.

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**Section 2-5: Initiation of Warrant Articles**

(b) The board of selectmen shall close the warrant not less than 75 days prior to the date for the annual town meeting and not less than 45 days prior to the date for any special town meeting. By ~~four-fifths~~ vote, the board of selectmen may waive the aforementioned requirements for the special town meeting in case of emergency.

*Action: Change 75 days to 50 days and 45 days to 25 days; and change vote from "four-fifths" to "majority".*

(b) The board of selectmen shall close the warrant not less than 50 days prior to the date for the annual town meeting and not less than 25 days prior to the date for any special town meeting. By majority vote, the board of selectmen may waive the aforementioned requirements for the special town meeting in case of emergency.

*Reason: Improvements in public communications allow more time for deliberation on issues before closing the warrant.*

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**Section 2-5: Initiation of Warrant Articles**

(c) The voter handbook shall include the text of any annual or special town meeting warrant with the recommendations and counted votes of the finance committee, board of selectmen and any other appointed or elected board or committee proposing an article. In the voter handbook for the annual town meeting, the selectmen shall include the recommended operating budget with revenue projections, the departmental goals for the upcoming fiscal year and 5-year financial, debt and capital projections. The voter handbook shall be available to the public at the town hall and the public library not less than 15 days before the annual town meeting.

*Action: Revise the second sentence to include the selectmen's budget goals and an organization table in the voter handbook; and to change "5-year" to "five-year".*

(c) The voter handbook shall include the text of any annual or special town meeting warrant with the recommendations and counted votes of the finance committee, board of selectmen and any other appointed or elected board or committee proposing an article. In the voter handbook for the annual town meeting, the selectmen shall include the recommended operating budget with revenue projections, their budget goals, departmental goals for the upcoming fiscal year, an organization table, and five-year financial, debt and capital projections. The voter handbook shall be available to the public at the town hall and the public library not less than 15 days before the annual town meeting.

*Reason: To strengthen the importance of the selectmen setting budget goals and adopting up to date organization tables.*

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**Section 2-9: Finance Committee**



**TOWN OF BOURNE  
2015 CHARTER REVIEW COMMITTEE REPORT  
TO TOWN MEETING**

A finance committee shall be appointed as provided by by-law. Town employees, including school employees, shall not be eligible for appointment to, or service on, the finance committee. The finance committee shall choose from its members a chairperson and fill such other offices as it may create.

*Action: Add the wording: "It shall be the duty of this committee to investigate all proposals in the articles of the warrant for any town meeting that is budgetary in nature and affect the finances of the town and to recommend to the town at the time of said meeting a course of action thereon, and in general to make recommendations to the town in regard to any financial business of the town. It shall have control of the reserve fund of the town and make appropriations therefrom."*

A finance committee shall be appointed as provided by by-law. It shall be the duty of this committee to investigate all proposals in the articles of the warrant for any town meeting that is budgetary in nature and affect the finances of the town and to recommend to the town at the time of said meeting a course of action thereon, and in general to make recommendations to the town in regard to any financial business of the town. It shall have control of the reserve fund of the town and make appropriations therefrom. Town employees, including school employees, shall not be eligible for appointment to, or service on, the finance committee. The finance committee shall choose from its members a chairperson and fill such other offices as it may create.

*Reason: This wording from the Amherst charter limits the duties of the Finance Committee to budgetary matters, so that it need not have to act upon articles that do not affect town finances.*

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**Section 3-3: Policy Role [of the selectmen]**

The board of selectmen shall serve as the chief goal-setting and policy-making agency of the town, keeping in mind the goals, policies and action items of the local comprehensive plan, or LCP, and shall appoint a town administrator to carry out such policies. Policies, and goals specific to each policy, shall be filed with the town administrator not later than 45 days after the regular spring town election. An individual selectman shall have no independent authority unless specifically voted by the board of selectmen. Selectmen shall deal with administrative agencies and departments only through the town administrator.

Nothing in this section shall authorize a member of the board of selectmen, or a majority of its members, to become involved in the day-to-day administration of a town agency. The board of selectmen shall act only through the adoption of written policy goals, policies and action items which shall be implemented by the town administrator and written in a policy book that shall be available to the public for review.

*Action: Change 45 days to July 1*

*Action: Add the following at end of the first paragraph: "...and also published in the annual Town Report"*

*Action: Change the second sentence by removing "Policies, and goals specific to each policy," and replacing it with "Annual goals as voted by the Board of Selectmen"*



TOWN OF BOURNE  
2015 CHARTER REVIEW COMMITTEE REPORT  
TO TOWN MEETING

*Action: Move the last two sentences in paragraph one of Section 3-3 to the second paragraph in Section 3-3.*

*Action: Replace the first sentence in the second paragraph with "Selectmen, individually or as a board, shall not become involved in the day-to-day administration of a town agency or department."*

The board of selectmen shall serve as the chief goal-setting and policy-making agency of the town, keeping in mind the goals, policies and action items of the local comprehensive plan, or LCP, and shall appoint a town administrator to carry out such policies. Annual goals as voted by the board of selectmen shall be filed with the town administrator not later than July 1st after the regular spring town election and also published in the annual Town Report.

An individual selectman shall have no independent authority unless specifically voted by the board of selectmen. Selectmen shall deal with administrative agencies and departments only through the town administrator. Selectmen, individually or as a board, shall not become involved in the day-to-day administration of a town department. The board of selectmen shall act only through the adoption of written policy goals, policies and action items which shall be implemented by the town administrator and written in a policy book that shall be available to the public for review.

*Reason: These changes further emphasize the stated role of the board of selectmen as a policy making body with no direct involvement in day-to-day operation of any town department.*

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Section 3-5: Appointing Powers

The board of selectmen shall appoint the town administrator, town counsel, registrars of voters, constables and members of all multi-member bodies for whom no other appointment provision is made in this charter or by by-law. All boards, committees and commissions appointed by the board of selectmen shall be responsible to the board of selectmen.

*Action: Add "Representatives of boards or committees specified as members of any committee shall be designated by their respective boards or committees."*

The board of selectmen shall appoint the town administrator, town counsel, registrars of voters, constables and members of all multi-member bodies for whom no other appointment provision is made in this charter or by by-law. Representatives of boards or committees specified as members of any committee shall be designated by their respective boards or committees. All boards, committees and commissions appointed by the board of selectmen shall be responsible to the board of selectmen.

*Reason: To clarify that the choice of which member represents a board or committee is the responsibility of that board or committee and may not be dictated by the selectmen.*

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Section 3-6: Prohibitions

- (a) No member of the board of selectmen shall serve on an appointed town board established by this charter, by by-law, by town meeting or by the board of selectmen for which the board of selectmen is the appointing authority.
- (b) No member of the board of selectmen shall hold any other elected town office or full-time town employment during that member's term of office.
- (c) No former member of the board of selectmen shall hold an appointed town office for which compensation is paid or hold full-time town employment until 2 years after that former member's term of office on the board has expired.

*Action: Revise Section 3-6 (a) to read "No member of the board of selectmen shall serve on an elected or appointed town board or committee established by this charter, by by-law, or by town meeting, unless otherwise specified in the charter, by-law, by town meeting or by other applicable law."*

*Action: Remove "full-time" from paragraph (b)*

*Action: Revise Section 3-6 (c) to read: "No member of the board of selectmen may be employed by the town within two years after that former member's resignation or term of office has expired."*

- (a) No member of the board of selectmen shall serve on an elected or appointed town board or committee established by this charter, by by-law, or by town meeting, unless otherwise specified in the charter, by-law, by town meeting or by other applicable law.
- (b) No member of the board of selectmen shall hold any other elected town office or town employment during that member's term of office.
- (c) No member of the board of selectmen may be employed by the town within two years after that former member's resignation or term of office has expired.

*Reason: To bring the charter into compliance with the state ethics standards.*

Section 4-1 Appointment: Qualification; Term (of Town Administrator)

The board of selectmen shall appoint a town administrator search committee of not fewer than 5 and not more than 9 residents of the community to assist the board of selectmen in the recruitment and selection of the town administrator. If the board of selectmen does not select 1 of the candidates presented by the search committee within 30 days, then the search committee shall resume its search and submit an additional list of candidates to the board of selectmen within 60 days after it resumes the search.

*Action: Replace the numeral 1 with the word "one" and change the length of time allowed to select a candidate from 30 to 60 days.*

The board of selectmen shall appoint a town administrator search committee of not fewer than 5 and not more than 9 residents of the community to assist the board of selectmen in the recruitment and selection of the town administrator. If the board of selectmen does not select one of the candidates presented by the search committee within 60 days, then the search committee



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shall resume its search and submit an additional list of candidates to the board of selectmen within 60 days after it resumes the search.

*Reason: Thirty days is an inadequate time to schedule and conduct interviews.*

(Section 4-1 continued)

The board of selectmen, by an affirmative vote of 4 members, shall appoint the town administrator for an indefinite term and fix the town administrator's compensation within the amount annually appropriated for that purpose. The town administrator shall be appointed solely on the basis of executive and administrative qualifications.

*Action: Replace the numeral "4" with the word "four" and change "an indefinite term" to "a term defined by contract".*

The board of selectmen, by an affirmative vote of four members, shall appoint the town administrator for a term defined by contract and fix the town administrator's compensation within the amount annually appropriated for that purpose. The town administrator shall be appointed solely on the basis of executive and administrative qualifications.

*Reason: "Indefinite" could be interpreted to mean "continuing with no specified end."*

(Section 4-1 continued)

The town administrator shall be a professionally qualified person of proven ability, especially fitted to perform the duties of the office by education, training and previous experience in municipal administration. The town administrator shall have at least a bachelor's degree, but preferably a master's degree, in public administration, business management or a related field, at least 7 years experience in an upper level executive municipal position or any equivalent combination of education and experience. The town administrator need not be a resident of the town when appointed but shall establish primary residence within Barnstable, Bristol or Plymouth county with 1 year after the date of appointment; provided, however, that the board of selectmen may, by simple majority vote of the selectmen in office at the time of appointment, extend to a time certain the time for establishing residence or otherwise allow the town administrator to reside outside of those counties.

*Action: Break this paragraph into two and require that the administrator establish primary residence in the Town of Bourne within one year after appointment; but keeping the authority of the selectmen to waive this requirement for any reason.*

The town administrator shall be a professionally qualified person of proven ability, especially fitted to perform the duties of the office by education, training and previous experience in municipal administration. The town administrator shall have at least a bachelor's degree, but preferably a master's degree, in public administration, business management or a related field, at least 7 years experience in an upper level executive municipal position or any equivalent combination of education and experience.

The town administrator need not be a resident of the town when appointed but shall establish primary residence in the Town of Bourne within one year after the date of appointment; provided, however, that the board of selectmen may, by simple majority vote of the selectmen in office at the time of appointment, extend the time for establishing residence or otherwise allow



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the town administrator to reside elsewhere. Once a residency exemption is granted to a specific administrator, it may not be rescinded in future contracts with that administrator.

*Reason: While most people feel that the administrator would be more invested in the town if a resident, there may be times where such a restriction would discourage a highly qualified applicant from applying for the position.*

## Section 4-4 Temporary Absence (of Town Administrator)

The town administrator may, by letter filed with the town clerk and board of selectmen, designate as acting town administrator, a qualified officer or employee of the town, to perform the duties of the town administrator during a temporary absence or disability. If the absence or disability exceeds 30 days, any designation made by the town administrator shall be subject to the approval of the board of selectmen. If the town administrator fails to make a designation or if the person so designated is unable to serve, the board of selectmen may designate some other qualified employee of the town to perform the duties of the town administrator until the town administrator shall return.

*Action: Change "may" to "shall" in the first and third sentences; and change the maximum period of absence from "exceeds 30 days" to "greater than ten business days."*

The town administrator shall, by letter filed with the town clerk and board of selectmen, designate as acting town administrator, a qualified officer or employee of the town, to perform the duties of the town administrator during a temporary absence or disability. If the absence or disability greater than ten business days, any designation made by the town administrator shall be subject to the approval of the board of selectmen. If the town administrator fails to make a designation or if the person so designated is unable to serve, the board of selectmen shall designate some other qualified employee of the town to perform the duties of the town administrator until the town administrator shall return.

*Reason: The current wording leaves the town without administrative leadership for too long and does not require that a temporary administrator be designated.*

## Section 4-6 Powers and Duties (of Town Administrator)

(c) prepare and submit an annual operating budget and capital improvement program and budget in accordance with sections 7-1 and 7-2 of this charter;

*Action: Add "and in accordance with the policies and goals established by the Board of Selectmen." after "of the charter;"*

(c) prepare and submit an annual operating budget and capital improvement program and budget in accordance with sections 7-1 and 7-2 of this charter; and in accordance with the policies and goals established by the Board of Selectmen.

*Reason: To emphasize the importance of basing town budgets on adopted policies and goals.*



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(Section 4-6 continued)

(f) keep the board of selectmen fully informed as to the needs of the town and make recommendations to the board;

*Action: Replace "...as to the..." with "...of all issues and potential problems...", and "...the board..." with "...address such issues and problems".*

(f) keep the board of selectmen fully informed of all issues and potential problems or needs of the town and make recommendations to address such issues and problems;

*Reason: To clarify the administrator's obligation to keep the selectmen informed of all issues and problems that they need to address.*

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(Section 4-6 continued)

(m) fix the compensation of all town employees and officers appointed by the town administrator within the limits of the town's compensation plan, collective bargaining agreements and other employment agreements;

*Action: Add "...and inform the Board of Selectmen of all changes in compensation made;" (m) fix the compensation of all town employees and officers appointed by the town administrator within the limits of the town's compensation plan, collective bargaining agreements and other employment agreements; and inform the Board of Selectmen of all changes in compensation made within 30 days;*

*Reason: Selectmen have stated that they have not been made aware of large changes in compensation made by the administrator.*

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Section 5-1: Table of Organization

The town administrator shall prepare for submission to the board of selectmen a table of organization establishing personnel requirements within the town agencies created by the charter, by by-law or by administrative code. The table of organization shall become effective unless rejected by the board of selectmen within 30 days following its submission.

*Action: Remove the first sentence in its entirety and replace it with "The town administrator shall submit a table of organization establishing personnel requirements within all town departments to the board of selectmen by June 1<sup>st</sup> of each year."*

The town administrator shall submit a table of organization establishing personnel requirements within all town departments to the board of selectmen by June 1<sup>st</sup> of each year. The table of organization shall become effective unless rejected by the board of selectmen within 30 days following its submission.

*Reason: Current charter does not require annual review and sets no deadline, so the table of organization is rarely updated.*

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**Article 5**



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**Administrative Organization.**

*Action: Add the following Section 5-7: Police Department:*

**Section 5-7: Police Department:**

There shall be a Police Department under the control and supervision of an officer known as the Chief of Police. The Chief of Police is appointed pursuant to Section 4-6(b) of the Town Charter. The town administrator is the appointing authority for all police officers under control of the Chief of Police. The Chief of Police may from time to time make suitable regulations governing the police department, and the officers thereof, subject to approval of the town administrator; provided, that such regulations shall become effective without such approval upon the failure of the town administrator to take action thereon within thirty days after they have been submitted to the town administrator by the Chief of Police. The Chief of Police shall be in immediate control of all town property used by the police department, and of the police officers, whom he shall assign to their respective duties and who shall obey all orders of the Chief of Police.

*Action: Add the following Section 5-8: Chief of the Fire Department:*

**Section 5-8: Fire Department:**

There shall be a Fire Department under the control and supervision of an officer known as the Chief of the Fire Department. The Chief of the Fire Department is appointed pursuant to Section 4-6(b) of the Town Charter. The Chief of the Fire Department shall have charge of extinguishing fires in the town and the protection of life and property in case of fire. The Chief of the Fire Department shall purchase and keep in repair all property and apparatus used for and by the fire department, with the approval of the town administrator. The Chief of the Fire Department shall have and exercise all the powers and discharge all the duties conferred or imposed by statute upon fire chiefs in towns except as herein provided, and shall appoint deputy chiefs and such officers and firemen as he may think necessary; and may remove the same at any time for cause and after a hearing. The Chief of the Fire Department shall have full and absolute authority in the administration of the fire department, shall make all rules and regulations for its operation, shall report to the town administrator from time to time as the administrator may require, and shall annually report to the town the condition of the department with his recommendations thereon. In the expenditure of money the Chief of the Fire Department shall be subject to such further limitations as the town may from time to time prescribe.

*Reason: References to appointment of the Police Chief and Fire Chief were included in the charter when it was drafted in 2000, but removed in 2007. This wording adds those two departments to the charter and defines their chain of command.*

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**Section 6-8: Housing Authority.**

There shall be a housing authority to consist of 5 members, 4 of whom shall be elected and 1 of whom shall be appointed by the secretary of housing and community development or as otherwise provided by law. Housing authority members shall serve for 3-year terms so arranged that as nearly an equal number of terms as possible shall expire each year.

*Action: Change the length of term to five years to be in compliance with MGL Chapter 121b.*



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There shall be a housing authority to consist of 5 members, 4 of whom shall be elected and 1 of whom shall be appointed by the secretary of housing and community development or as otherwise provided by law. Housing authority members shall serve for 5-year terms so arranged that as nearly an equal number of terms as possible shall expire each year.

*Reason: The current charter states the term to be 3 years, but that conflicts with MGL Chapter 121b which states the term should be 5 years.*

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Section 7-3 Long Term Financial Forecast

The town administrator shall prepare annually a 5-year financial forecast of town revenue, expenditures and general financial condition of the town. The forecast shall include, but not be limited to, the identification of factors which impact the financial condition of the town; revenue and expenditure trends; potential sources of new or expanded revenues and any long or short term actions which may be taken that will enhance the financial condition of the town. The forecast shall be submitted to the board of selectmen and the board of selectmen shall make it available to the public for inspection.

*Action: Add at the end of the first sentence "...which shall be submitted to the Board of Selectmen as part of the annual budget message."*

The town administrator shall prepare annually a 5-year financial forecast of town revenue, expenditures and general financial condition of the town which shall be submitted to the Board of Selectmen as part of the annual budget message. The forecast shall include, but not be limited to, the identification of factors which impact the financial condition of the town; revenue and expenditure trends; potential sources of new or expanded revenues and any long or short term actions which may be taken that will enhance the financial condition of the town. The forecast shall be submitted to the board of selectmen and the board of selectmen shall make it available to the public for inspection.

*Reason: This change makes a connection between the 5-year financial forecast and the annual budget message so that it is more likely to be followed.*

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Section 8-6 (c) Procedures for Multiple Member Bodies

(c) Each multiple member body shall provide for the keeping of the minutes of its proceedings. The minutes shall be a public record and a copy of the minutes shall be filed with the office of the town clerk and posted on the town website for at least 5 years.

*Action: Remove the words "...and posted on the town website for at least 5 years."*

(c) Each multiple member body shall provide for the keeping of the minutes of its proceedings. The minutes shall be a public record and a copy of the minutes shall be filed with the office of the town clerk.

*Reason: This is an unreasonable and unnecessary requirement that has not been followed.*

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Section 8-9 Definitions

*Action: Add the following definitions for "goal" and "policy" to the list of definitions.*

**"Goal",** the desired outcome of a policy, program or other action

**"Policy",** a statement of preferred practice

*Reason: These terms are frequently used in the charter but not currently defined.*